



Issue Date: 31 July 2013

ARB Case No: 12-109

ALJ Case No.: 2010-CPS-00001

In the Matter of:

THOMAS SAPORITO, *pro se*,

Complainant,

v.

PUBLIX SUPER MARKETS, INC., et al.,

Respondents.

ORDER DISMISSING REQUEST FOR HEARING

The above matter is a complaint of employment discrimination under Section 219 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), 15 U.S.C. §2087¹, and is governed by its implementing regulations at 29 CFR Part 1983.² The case was referred to the Office of Administrative Law Judges for formal hearing upon the January 5, 2010 appeal by Complainant of the December 10, 2009, Occupational Safety and Health Administration determination which dismissed that the Complainant's complaints because the complaints "are not covered by CPSIA and cannot be pursued by CPSIA" (OSHA Case No. 4-1050-09-076).

On March 5, 2010, this Administrative Law Judge issued a "Recommended Determination and Order Retaining Jurisdiction for Action Under 15 U.S.C. §2087(b)(3)(C)"³ and Dismissing Complaint." On April 13, 2010, this Administrative Law Judge issued a "Recommended Determination and Order Awarding Attorney Fees pursuant to 15 U.S.C. §2087(b)(3)(C)." Both Recommended Decisions and Orders were appealed to the Administrative Review Board.

¹ References within §2087 to "this chapter" includes the Consumer Product Safety Act of October 27, 1972 as amended (CPSA).

² The CPSIA was enacted on August 14, 2008 with §2087 being effective on August 14, 2008. The interim final regulations were effective August 31, 2010; 75 Fed. Reg. 53533 - 53544. Final regulations were effective on July 10, 2012; 77 Fed. Reg. 40494 - 40509.

³ This involves awarding attorney fees to Respondent under certain circumstances.

On March 28, 2012 the Administrative Review Board issued a “Decision and Order of Remand.”⁴ The Administrative Review Board stated “our ruling is narrow” in reversing conclusions of law related to protective activity and “limiting ourselves to two distinct bases ... lack of Commission jurisdiction and speculative complaints.” The remand file was received in this office on May 29, 2012.

On August 31, 2012, this Administrative Law Judge issued “Summary Decision and Order – Denying Complaints.” On April 30, 2013 the Administrative Review Board issued a “Decision and Order of Remand.”⁵ The Administrative Review Board remanded the case “to (1) permit [the Complainant] to engage in limited discovery within the ALJ’s discretion and (2) allow for a reasonable opportunity to file a timely response to both motions” for summary decision. The remand file was received in this office on July 23, 2013.

On May 30, 2013, the Complainant filed “Complainant’s Notice of Withdrawal of Complaint(s).”

In view of all the foregoing, **the Complainant’s request to withdraw his complaint under the CPS is GRANTED and the request for hearing is DISMISSED.** Pursuant to 20 CFR §1983.111(c), the December 10, 2009, Occupational Safety and Health Administration determination is the Secretary’s final order on the complaints.

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia

⁴ ARB Case No. 10-073.

⁵ ARB Case No. 12-109